

Graham County Schools

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Clark J Carringer
Superintendent

BOARD OF EDUCATION

Todd Odom, Chairperson
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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION WASHINGTON, DC 20554

IN THE MATTER OF:

REQUEST FOR REVIEW)	
OF THE DECISION OF THE)	
UNIVERSAL SERVICE ADMINISTRATOR BY)	Administrator Correspondence
)	Dated
GRAHAM COUNTY SCHOOL DISTRICT)	May 07, 2012
BEN NUMBER: 127098)	
)	
SCHOOLS AND LIBRARIES UNIVERSAL)	CC Docket No. 02-6
SERVICE SUPPORT MECHANISM)	
)	
WIRELINE COMPETITION BUREAU)	

LETTER OF APPEAL

May 24, 2012

Letter of Appeal
Schools and Libraries - Correspondence Unit
100 S. Jefferson Rd.
PO Box 902
Whippany, NJ 07981
Email: Appeals@sl.universalservice.org
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To Whom it May Concern,

This Letter of Appeal is in response to three (3) "Notification of Commitment Adjustment Letters" dated May 07, 2012 regarding:

1. Form 471 Application Number: 614927
Funding Year: 2008
Applicant's for Identifier: 471-08InternalConnection
Billed Entity Number: 127098
FCC Registration Number: 0009597864
SPIN: 143025074

Service Provider Name: Professional Network Consultants, INC.
Service Provider Contact Person: Jeff Gaura

Graham County Schools disagrees with the "Applicant COMAD-Finding 2" that states "After a thorough investigation, it has been determined that this funding commitment must be reduced by \$31,104.00. During an audit, funds disbursed under FRN 1738044 were not consistent with the services ordered and described in the Item 21 attachment. The applicant requested and funds were committed based on the services approved in the Item 21 attachment. USAC was invoiced an amount exceeding the services described in the Item 21 attachment. Pursuant to FCC rules, if funding requests are submitted in the amounts that go beyond what the applicant can substantiate, those funding commitments will be reduced to the amount that can be substantiated. Since FRN 1738044 included the amount that the applicant could not justify, this funding commitment will be reduced by \$31,104.00 to deduct the unsubstantiated amount of eligible services and USAC will seek recovery of any improperly disbursed funds from the applicant."

2. Form 471 Application Number: 677276
Funding Year: 2009
Applicant's for Identifier: 47109BM
Billed Entity Number: 127098
FCC Registration Number: 0009597864
SPIN: 143025074
Service Provider Name: Professional Network Consultants, INC.
Service Provider Contact Person: Jeff Gaura

Graham County Schools disagrees with the "Applicant COMAD-Finding 2" that states "After a thorough investigation, it has been determined that this funding commitment must be reduced by \$31,104.00. During an audit, funds disbursed under FRN 1865510 were not consistent with the services ordered and described in the Item 21 attachment. The applicant requested and funds were committed based on the services approved in the Item 21 attachment. USAC was invoiced an amount exceeding the services described in the Item 21 attachment. Pursuant to FCC rules, if funding requests are submitted in the amounts that go beyond what the applicant can substantiate, those funding commitments will be reduced to the amount that can be substantiated. Since FRN 1865510 included the amount that the applicant could not justify, this funding commitment will be reduced by \$31,104.00 to deduct the unsubstantiated amount of eligible services and USAC will seek recovery of any improperly disbursed funds from the applicant."

3. Form 471 Application Number: 743650
Funding Year: 2010
Applicant's for Identifier: 471Yr13BM
Billed Entity Number: 127098
FCC Registration Number: 0009597864
SPIN: 143025074
Service Provider Name: Professional Network Consultants, INC.
Service Provider Contact Person: Jeff Gaura

Graham County Schools disagrees with the “Applicant COMAD-Finding 2” that states “After a thorough investigation, it has been determined that this funding commitment must be reduced by \$31,104.00. During an audit, funds disbursed under FRN 2007413 were not consistent with the services ordered and described in the Item 21 attachment. The applicant requested and funds were committed based on the services approved in the Item 21 attachment. USAC was invoiced an amount exceeding the services described in the Item 21 attachment. Pursuant to FCC rules, if funding requests are submitted in the amounts that go beyond what the applicant can substantiate, those funding commitments will be reduced to the amount that can be substantiated. Since FRN 2007413 included the amount that the applicant could not justify, this funding commitment will be reduced by \$31,104.00 to deduct the unsubstantiated amount of eligible services and USAC will seek recovery of any improperly disbursed funds from the applicant.”

Discussion

Graham County Schools, Beneficiary of FCC Forms 471 # 614927, 677276, and 743650 as well as the Item 21 Attachments pertaining to FRNs 1738044, 1865510, and 2007413, respectively, for Basic Maintenance of Internal Connections (BMIC) services, wish to appeal these findings. We disagree with the statement that “funds disbursed under FRN” 1738044, 1865510, and 2007413 “were not consistent with the services ordered and described in the Item 21 attachment”.

In response to auditor’s calculations of “44 hours per week for 48 weeks for \$253,440 per year, or \$120 per hour”, the Addendum A does not state that PNC would provide “44 hours per week for 48 weeks for \$253,440 per year, or \$120 per hour”. The statement in Addendum A of “average of about 44 hours per week” is an explanation of the per year fee. However, it does state that “PNC will provide Basic Maintenance of Internal Connections services to Graham County Schools (GCS) for a fee of \$253,440.00 per year” which is 12 months or 52 weeks. Also, the addendum does not state the rate per hour.

Addendum A of the multi-year contract states “this fee is for an average of about 44 hours per week of Basic Maintenance of Internal Connections services”. The intent of this wording is to allow for variances of hours per week according to BMIC needs.

Item 21 Attachment COMAD

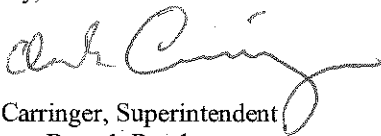
Graham believes the imposition of the highest administrative penalty in the E-Rate program – a Commitment Adjustment is absolutely not warranted based on the simple review of an Item 21 Attachment. The Item 21 attachment is a requirement of the E-Rate program on the FCC Form 471. The Administrator provides guidance for information that should be included on an Item 21 attachment and provides examples of acceptable Item 21 attachments. The Federal Communications Commission does not have regulations of any kind describing the requirements of Item 21 attachments. We believe a COMAD based on minor discrepancies stated on a Item 21 attachment is unprecedented and goes beyond the authority of the

Administrator as the Administrator may only implement Commission regulations and Commission regulations are absolutely silent on Item 21 attachments or how "detailed" a detailed description of services should be. The only guidance applicants have for preparation of an Item 21 Attachment for Basic Maintenance of Internal Connections is a document on the Administrator Web site, and included here. The Administrator example could best be described as general in nature, lacking the amount of detail Graham provided in the Item 21 attachments here under appeal. Graham attempted to be as detailed as possible and provided more information than suggested on the Administrator's own example. We believe the Administrator lacks authority to rescind a funding commitment based on an interpretation of an Item 21 attachment, where no Commission regulation exists.

The Item 21 attachment "Product or Service Description", we stated that this service was "Monthly for 38 weeks of onsite time from Certified Engineer". This is a description of services, not a formula for calculating the amount of "Recurring Pre-discount Cost". The formula for calculating the amount of "Recurring Pre-discount Cost" is $\$253,440 / 12 \text{ Months} = \$21,120$. This is the formula we used to calculate our monthly fee based on the yearly quote of \$253,440 for BMIC. Clearly, the Item 21 attachment was detailed in nature but had enough ambiguity to justify the actual services rendered and authorized payments made for the three years of this contract.

In conclusion, Graham County Schools as Beneficiary does demonstrate sufficient knowledge of the "Rules governing requesting funding for eligible services", in that, this addendum gives a fixed fee per year of \$253,440. Based on the Item 21 attachment calculations of 12 months, our fee would be \$21,120 per month. Concerning the determination that these funding commitments must be reduced in the finding, we did not ask for any more funds than was necessary to cover the fee per year of \$253,440.

Sincerely,



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Cc: Jeff Gaura, Professional Network Consultants, INC.

App Total: \$1500.00